data, ensuring that health care providers are alerted to particularly critical data or "panic values." This causes more efficient delivery of health care services, and a dramatic shortening in the length of hospital visits. The LabAlert system streamlines medical workflow by dispatching lab data with pinpoint precision to individual health care providers wherever they may be, in or away from the hospital.

The LabAlert system is simply the most economical and reliable method available today to distribute medical information; and it is operating today in various parts of the Country. This is not an "experimental" or drawing-board proposal; LabAlert exists today, and it has already had a measurable, favorable impact on the cost and quality of health care services.

Critical Need for an Exclusive PCP Channel.

When Clarity began developing the LabAlert service, it faced a dilemma all too familiar to many smaller communications entrepreneurs: the lack of available radio frequencies. After exploring many possibilities, none of which met LabAlert's operational requirements or Clarity's start-up budget, Clarity turned to the Private Radio Services, in particular, the 900 MHz PCP services, as a last resort.

So it was that approximately two years ago, Clarity's affiliated entity, Greenline Partners, discovered that certain 900 MHz PCP frequencies were virtually unused nationwide. Greenline applied for and was granted licenses on these frequencies, and began constructing and operating them for LabAlert service

nationwide.[3]

At this writing, Greenline is licensed for approximately 150 transmitter sites in all of the top 34 markets nationwide. Greenline is continuing to license and build new sites each quarter, as additional hospitals and medical centers join the LabAlert service.

Unique Nature of this Service.

Unlike conventional paging service providers, which can use essentially the same transmitter sites as their paging competitors in most every major market, Clarity's transmitter site locations are uniquely driven by the needs of the health care provider customer. For instance, a LabAlert transmitter must typically be installed at or near a hospital or medical center in order to ensure complete coverage of the medical facilities. Due to the critical nature of the patient data being transmitted, inadequacies in coverage are not acceptable; Clarity, its health care provider customers, and their patients, cannot afford to discover after the fact that a particular transmitter site does not provide a reliable signal to portions of a hospital building. Indeed, prior to installing the service, Clarity personnel perform actual field tests of transmitter signal strength, using existing transmitters for benchmarks, to determine the optimum locations for the LabAlert transmitter.

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[3] Clarity and Greenline would be willing to turn in any of the five PCP frequencies that they currently hold, if the FCC could locate any one 929 MHz frequency that could be designated as exclusive nationwide for LabAlert services.

These unique operational requirements explain why it has been particularly difficult for Clarity to meet the 300 transmitter requirement at this time. Clarity simply cannot install its transmitters at just any location in a given community; it must first determine where the health care provider customer needs a transmitter most. This hospital-based transmitter site requirement also makes it difficult for Clarity to meet the local or regional exclusivity rules, absent a rule waiver.[4]

Moreover, because the LabAlert system must be customized for each medical facility in an area, it is necessary that at least one medical facility actually subscribe to LabAlert before Clarity constructs a system in that area. Due to varying budget cycles, a hospital or medical center that wishes to subscribe to LabAlert may not be able to do so until it receives approval from a governing board, or until its next fiscal period. The delays inherent in this process add to the difficulties of building out a 300 transmitter system within the time permitted under the Rules.[5]

It is simply critical to the success and utility of LabAlert that the system be licensed on one "clear" channel nationwide. As

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[4] Nonetheless, if the FCC denies this waiver request with regard to the 300 transmitter site minimum required, Clarity requests at least eight months from the date of that denial to obtain authorizations for the additional transmitter sites needed to reach the 300 count.

[5] Since transmitter placement is essential to the proper functioning the LabAlert system, it is difficult for Clarity to apply for additional sites until a medical institution subscribes and field tests have been conducted. Until those steps are completed, Clarity has no way of knowing where it will construct its base stations, and any sites for which Clarity would apply would likely be subject to substantial changes.

is evident from the nature of the information provided by LabAlert -- critical medical information -- the service cannot risk any form of shared channel interference. In the case of the LabAlert service, a message that becomes "lost" from a clinical lab due to co-channel interference, could truly mean the difference between life and death for the affected patient.

Multiple PCP frequencies would also pose signal coverage problems for the health care providers that use LabAlert. For instance, since many doctors travel over large geographic areas which might include multiple signal coverage areas, they would face problems in receiving a LabAlert signal if Clarity could not obtain a license for the same PCP frequency in adjoining service areas.

In sum, LabAlert is not just another conventional "paging" service; it is a fully-integrated medical data network. Because of the complexities of this network, Clarity and its customers simply cannot afford to operate on more than one PCP channel, which would require multiple inventories of expensive, essential network equipment. The signal coverage problems that could occur with multiple frequencies could be so severe as to be a health threat. Moreover, doctors who are familiar with the congestion attendant to paging operations have expressed concerns about using the LabAlert service if the network would be shared with paging services. For all these reasons, the LabAlert service will need a single, exclusive PCP frequency is this worthwhile service is to meet its full potential.

Implications of the Exclusivity Order.

In the midst of the development of LabAlert on these PCP channels, the FCC initiated its exclusivity rulemaking proceedings. The timing of those proceedings, and the adoption of exclusivity Rules, was particularly propitious for LabAlert, for reasons just stated. For LabAlert to meet its full potential, it must operate on a common channel, without threat of interference from shared-channel licensees.

Clarity has every intention of ultimately meeting the requirements for nationwide PCP exclusivity, and commends the FCC for its speed in adopting these rules. The only problem for Clarity is that, in the absence of this waiver, by the time it has built the 300 transmitters needed to obtain exclusivity, the advantages of exclusivity will have been dissipated due to interim licensing on the 929.6875 (or 929.2375) MHz channel. Consequently, a short-term grant of this waiver request is critical to the success of LabAlert.

Existing and Potential Customers.

As previously mentioned, Clarity already provides the LabAlert services to the medical community. LabAlert has already received high praise from the doctors and health providers who employ it. At the FCC's request, Clarity could provide the Commission with a list of references who use the LabAlert service, and who would recommend that the FCC take whatever steps possible to help develop this service nationwide. Some of these references hold senior positions at some of the most highly-respected hospitals in the

nation.

The list of potential customers for the LabAlert service is equally impressive. At this writing, Clarity is in the midst of discussions with a large government-affiliated health care service provider, that has expressed considerable interest in employing the LabAlert service throughout the Nation. If that occurs, then Clarity will in a very brief time be constructing well over the 300 transmitters needed for nationwide exclusivity.[6]

Equipment.

Because of the unique nature of the LabAlert service and its obvious potential for nationwide growth, Clarity must maintain the confidential nature of most of its network configuration. As stated previously, Clarity has applied or will apply for patents for several components of its system; public disclosure of that technology could jeopardize Clarity's patent rights.[7] Nevertheless, some of the equipment to be used in conjunction with the network is as follows:

A. Receive Devices. The receive devices that can operate on the LabAlert service include the following:

1. A micro hand held alphanumeric data receiver. These devices can store up to 32 patient records, and the information received by these devices can be downloaded into a PC.

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[6] It may still be necessary, however, for Clarity to obtain a waiver of the requirement to serve two markets in each of the seven "RBOC" regions.

[7] If the FCC desires, Clarity can submit more detailed technical information concerning the LabAlert system for in camera review.

2. The LabAlert Palmtop, a computer with an integrated data receiver. The LabAlert Palmtop monitors real-time lab data for over 200 patients, and automatically updates patient information.

B. The "CommGateway". The communications gateway for the LabAlert system is a UNIX-based network server which acts as the central point of information distribution to hand held receivers such as those discussed above, fax machines, remote terminals and two-way wireless devices. This network server has been designed interface with multiple systems and to route data quickly to the appropriate health care provider.

The LabAlert system has numerous other features which make it a unique and valuable service to medical professionals. For example, the system has an acknowledgement function, whereby it resends data for "panic values" and "stat" tests until an acknowledgement is received. Compression and encryption of data ensures the confidentiality of patient information. Clarity has also developed a messaging software which permits health care providers to send messages to the hand held receivers from any PC.

II. Nature of the Waiver Request.

Clarity's LabAlert service is an eligible service under the PCP rules. See 47 C.F.R. § 494(c). The LabAlert service will be carried on Greenline's PCP network in complete compliance with the newly adopted PCP rules. The only problem facing Clarity is that, by the time demand for LabAlert "takes off," and by the time it determines precisely where its anticipated 300-plus transmitters

should be located, the FCC may have licensed numerous paging operators onto the subject 929 PCP frequencies.

The Order adopted provisions for "slow growth" of systems of 30 transmitters or more; however, the FCC limited the "slow growth" option to future licensees. See Order at n.43. Since Greenline held licenses for the subject 929 MHz frequencies prior to the Commission's PCP exclusivity proceeding, the new Rules preclude Greenline from qualifying for "slow growth."

Clarity is aware that the Order's "slow growth" provisions have been the subject of petitions for reconsideration; should the FCC decide to permit incumbents to qualify for "slow growth," that decision would alleviate many of Clarity's difficulties. Nonetheless, Clarity's request may not perfectly fit the "slow growth" requirements. Firstly, Greenline currently holds licenses for half the number of transmitters required for nationwide exclusivity; it does not appear that the "slow growth" Rule permits additional time for a licensee claiming exclusivity to apply for multiple transmitters, but only to construct transmitters for which it has applied. See 47 C.F.R. § 90.496; see also Order at ¶¶ 23-24. Because of the precision and care with which Clarity and Greenline's transmitters must be placed, they cannot readily apply for the requisite number of transmitters at one time. Moreover, because of the necessity for hospital-based transmitters, any construction timetable provided by Clarity would be subject to

continuous revision.[8]

Unless Clarity is granted exclusivity, the results will be chaotic and catastrophic for the LabAlert system: shared channel licensees will simply not be able to coordinate their operations with every LabAlert transmitter due to their unique hospital locations. Also, because of the enormous level of traffic that LabAlert generates, 24 hours per day, seven days per week, co-channel licensees will undoubtedly lack sufficient airtime on this shared channel. Of fundamental concern, of course, is the distinct possibility that critical medical information will be delayed or lost due to shared channel interference.

Clarity is only asking for some minimal assistance from the FCC to ward off this potential nightmare, and to encourage the development of a worthy public service. Right now, before any additional applicants are coordinated onto the subject frequency, the FCC can designate this channel as "exclusive" on a nationwide basis, for at least a brief three year time period. If, by the end of that time period, Clarity has not met the 300 transmitter rule nationwide, Clarity would not object to the channel being "opened" to new applicants, assuming the channel does not qualify as exclusive on either a local or regional basis. Nevertheless, Clarity is confident that by the end of that brief time period, the

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[8] Additionally, during the pendency of the petitions for reconsideration in Docket 93-35, a number of Greenline's construction periods may expire. Hence, without an immediate waiver, Greenline and Clarity may lose a number of authorizations that might otherwise be able to receive "slow growth" extensions should the Commission permit incumbents to apply for such extensions.

channel will be fully utilized by LabAlert customers.[9]

III. Special Circumstances Warrant a Waiver.

The Commission is certainly empowered to grant waivers of its Rules. "The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances." WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C.Cir. 1969)(citations omitted). Such "special circumstances" are present in the case of Clarity's LabAlert service.

First and foremost, the very nature of the LabAlert service is to improve the quality of health and medical services for everyone, throughout the nation. LabAlert can improve these services, while saving us all millions of dollars in lost time, money, and resources, which typically occurs in the process of delivering lab results to health care providers. Thus, this waiver will benefit hundreds of thousands of people (patients) who will never even subscribe to the LabAlert system themselves.

Unlike communications services that can be provided to the public by any number of SMRS or PCP licensees, Clarity's LabAlert

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[9] Clarity is aware of the fact that there are a small number of "grandfathered" licensees on the subject PCP frequencies. If those licensees actually construct their stations in a timely manner, Clarity will certainly cooperate with those licensees where they are located to avoid causing co-channel interference, as required under the Rules. Additionally, Clarity would be willing to enter affiliation arrangements with "grandfathered" co-channel licensees to provide LabAlert service in the "shared" geographic areas. Moreover, if the FCC grants Clarity exclusivity on any 929 MHz frequency, Clarity will gladly return its licenses for the other frequencies to the FCC for reassignment to other licensees.

service is unique from any other communications service currently available. No other single system can provide all the data and communications services provided by the LabAlert system; LabAlert combines data, signalling, storage and other services into a single service. The LabAlert system prioritizes patient information, stores patient records, automatically updates data, and can transmit that data to a wide variety of receiving units, which can in turn "communicate" with standard PCs. Since much of the technology that permits LabAlert to perform its many functions was developed and may be patented by Clarity and its affiliated entities, no other party would be capable of duplicating the LabAlert system.

This waiver request is thus akin to requests made by public health and safety service providers, in that the loss or diminution of the LabAlert service, which could "not be readily duplicated", could have an adverse impact on the health needs of entire communities. See, e.g., County of Los Angeles, 66 RR2d 1035, 1037 (Priv. Rad. Bur. 1989). Because this unique, life-saving service will not be possible in many areas absent a waiver, Clarity respectfully submits a grant of the requested waiver is supported by Commission precedent and will serve the public interest.

IV. Public Interest Considerations Warrant a Waiver.

Where public interest considerations are present, as in this case, the FCC has previously allowed reallocation of channels, it has granted extended construction periods, and it has even reinstated previously canceled licenses. See Id.; see also, New

minimis and in the public's interest. Compare with Big Bend Telephone, 2 FCC Rcd. 2413, 2414 (1986) (citations omitted); and, Nevada Bell, 68 RR2d 492, 493 (1990) (wherein rule waivers requested to use frequencies for purposes other than authorized).

Conclusion

For all the foregoing reasons, Greenline and Clarity respectfully request that a grant of this Request for Waiver would be in the public's interest, and that it should be granted.

GREENLINE PARTNERS, INC.
CLARITY MEDICAL CORPORATION

By: _____
Frederick M. Joyce
Christine McLaughlin

Their Attorneys

JOYCE & JACOBS
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Suite 130
Washington, D.C. 20037
(202) 457-0100

Date: April 21, 1994

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EXHIBIT ONE

GREENLINE PARTNERS, INC./CLARITY MEDICAL CORP.

PCP Licenses

Principal City	Callsign	Frequency
Albuquerque, NM	WPCE359	929.2375 MHz
Atlanta, GA	WPDM316	929.2625
Austin, TX	WPCY865	929.2375
Baltimore, MD	WPCE375	929.6875
Boston, MA	WPBY889	929.6875
Charlotte, NC	WPDC442	929.2375
Chicago, IL	WPCE354	929.2375
Dallas, TX	WPCE353	929.2375
Denver, CO	WPDG772	929.2625
Detroit, MI	WPBY888	929.7875
Indianapolis, IN	WPCE362	929.2375
Hartford, CT	WPCE376	929.6875
Houston, TX	WPDR318	929.2375
Kansas City, MO	WPDC439	929.2375
Las Vegas, NV	WPCE360	929.2375
Los Angeles, CA	WPCE377	929.8125
Los Angeles, CA	WNUR249	929.6875
Miami, FL	WPDC438	929.2375
Minneapolis, MN	WPCE355	929.2375
New York, NY	WPBY887	929.6875
Orlando, FL	WPCE364	929.2375
Philadelphia, PA	(pending)	
Phoenix, AZ	WPCE357	929.2375
Pittsburgh, PA	WPBY892	929.6875
Portland, OR	WPDC440	929.2375
Raleigh-Durham, NC	WPDG744	929.2625
Sacramento, CA	WPCE358	929.6875
St. Louis, MO	WPCE356	929.2375
Salt Lake City, UT	WPDC441	929.2375
San Antonio, TX	WPCE363	929.2375
San Diego, CA	WPBY891	929.8125
San Francisco, CA	WPDC437	929.6875
Seattle, WA	WPBY890	929.7875
Washington, DC	WPBY886	929.6875
West Palm Beach, FL	WPCE361	929.2375

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 21st day of April, 1994, copies of the foregoing Request for Rule Waiver were delivered by hand to the following:

Rosalind K. Allen, Chief
Rules Branch
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, Room 5202
Washington, D.C. 20554

David Furth, Esq.
Land Mobile and Microwave Division
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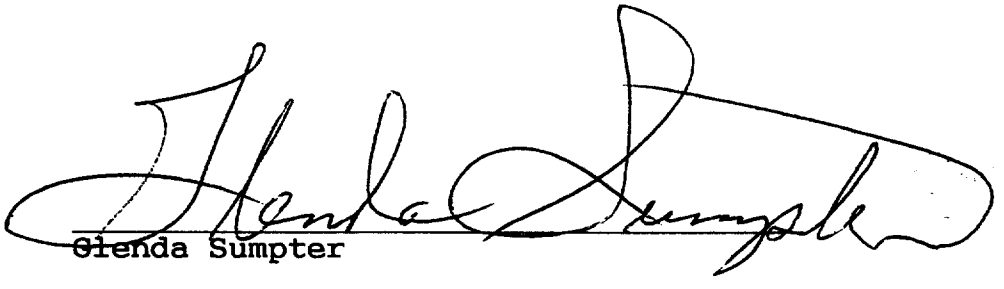

Glenda Sumpter

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April 11, 1994

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Federal Communications Commission
Waiver Requests
P.O. Box 358300
Pittsburgh, PA 15251-5305

Re: MAP Mobile Communications, Inc.
and MAP Paging Co., Inc.
Request for Temporary Waiver

To the Commission:

Transmitted herewith, on behalf of MAP Mobile Communications, Inc., and MAP Paging Co., Inc., is a request for temporary waiver of Section 90.495(a)(5) of the Commission's rules.

Also enclosed is a check for $105.00, and an FCC Form 155 (Fee Type Code "PDW") for a waiver of the Commission's rules relating to MAP's nationwide paging system.

Should you have any questions concerning this matter, please call me at (202) 429-7058 or Kurt E. DeSoto at (202) 429-7235.

Respectfully submitted,

David E. Hilliard

David E. Hilliard
Kurt E. DeSoto
Counsel for
MAP Mobile Communications, Inc.
and MAP Paging Co., Inc.

DEH:krr
Attachment

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
MAP MOBILE COMMUNICATIONS, INC. AND MAP PAGING CO., INC.	)
Request For Temporary Waiver of Section 90.495(a)(5) of the Commission's Rules Regarding the Use of Frequency-Agile Transmitters	)

To: The Private Radio Bureau

REQUEST FOR TEMPORARY WAIVER

MAP Mobile Communications, Inc., and its wholly-owned subsidiary MAP Paging Co., Inc. (collectively "MAP"), hereby respectfully request a twenty-four month waiver of Section 90.495(a)(5) of the Commission's Rules regarding the use of frequency-agile transmitters.[1] While MAP is committed to the deployment of dedicated transmitters, and it commends the agency for recognizing the benefits of such a principle, MAP requires a temporary waiver of this rule so that it may complete the construction of facilities needed in new service areas and then logically phase out its frequency-agile transmitters serving existing areas. As discussed in greater detail below, grant of a waiver is consistent with FCC objectives to create a stable and

[1] Amendment of the Commission's Rules to Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 8318, Appendix A (1993) ("Report and Order").

predictable environment for licensees seeking to develop and invest in more efficient paging systems.[2]

I. BACKGROUND

A. Company Information

MAP entered into the communications business over three years ago as a reseller of alphanumeric paging services. In early 1992, however, MAP concluded that it could improve its offerings to the benefit of businesses and consumers as a facilities owner rather than a reseller. Specifically, MAP determined that as a facilities-based provider it could meet subscriber demand for three types of mobile messaging services: (1) local-only, call-forwarding messaging services; (2) host computer-to-host computer messaging services; and (3) nationwide/roaming services.

To meet these diverse demands, MAP decided to employ separate local and nationwide systems. It therefore applied for authorizations to operate on 929.3125 MHz on a local basis and on 929.5375 MHz nationwide. MAP also began negotiations with Metagram America Inc. ("Metagram") for the acquisition of Metagram's alphanumeric paging system operating on 929.9875 MHz. MAP has now acquired most of Metagram's authorizations and operates a nationwide system on that

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[2] Id. at 8318. The relief MAP requests is similar to that sought by PacTel Paging. See PacTel Paging, "Request of PacTel Paging For a Waiver of Section 90.495(a)(5) to Allow PacTel Paging Additional Time To Transition to Dedicated Transmitters," filed Dec. 23, 1993 ("PacTel Request"). MAP's request differs from PacTel's in that it (1) involves the transition of transmitters MAP owns or leases as part of a purchase plan as opposed to transmitters operated under an intercarrier agreement and (2) involves a channel MAP currently shares with another licensee. As explained below, these two differences further justify the need for a waiver.

channel. Many of MAP's base stations currently employ multi-frequency transmitters, but MAP plans to transition to single-frequency transmitters as discussed herein.

B. FCC's Exclusivity Order

On October 21, 1993, the FCC adopted rules that grant exclusivity to local, regional, and national PCP licensees. The agency's express purpose in adopting the rules was to create a more stable and predictable environment for licensees, thus giving them greater incentive to develop and invest in more efficient paging systems.[3]

In particular, the FCC decided to grant exclusivity to local systems that "consist of at least six contiguous transmitters, except in the New York, Los Angeles, and Chicago markets . . . where 18 contiguous transmitters are required . . ." and to grant exclusivity to nationwide systems that "consist of 300 or more transmitters in the continental United States . . . provid[ing] services to at least 50 markets listed in Section 90.741, including 25 of the top 50 markets and two markets in each of [seven] regions . . .."[4]

The Commission's new rules restrict the use of frequency-agile transmitters for the purpose of determining eligibility for exclusivity, however. Section 90.495(a)(5) states:

> Frequency-agile transmitters may be counted no more than once for purposes of [obtaining exclusivity]. A licensee using frequency-agile transmitters may qualify for exclusivity on a second frequency by constructing twice the number of transmitters required to obtain

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[3] Report and Order, at 8320.

[4] Id. at Appendix A, Section 90.495(a)(1) and (3).

exclusivity on a single frequency, provided that all other requirements of this section are met.

Several entities[5] petitioned the FCC to reconsider this restriction because they had constructed their systems using frequency-agile transmitters based on the substantial public interest benefits of using such transmitters and because of the expectation created by the FCC's Notice in this proceeding.[6] In addition, two companies -- PacTel Paging and Arch Communications Group -- have petitioned the Commission for a waiver of the rules.[7] In response to these concerns, the Private Radio Bureau decided that companies may retain their eligibility for exclusivity as long as they have the requisite number of single-frequency transmitters in service no later than 8 months following the Commission's Public Notice regarding their grant of exclusivity.[8] Thus, MAP must now replace its existing multi-frequency transmitters within 8 months after Public Notice of its grant of exclusivity.[9]

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[5] See, e.g., Amendment of the Commission's Rules to Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, "Petition for Reconsideration and Clarification of the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc.," filed December 27, 1993; "Petition for Clarification and Reconsideration of Paging Network, Inc.," filed December 27, 1993; "Petition for Reconsideration and Clarification of First National Paging Company, Inc." field December 27, 1993.

[6] Amendment of the Commission's Rules to Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 2227 (1993) ("Notice").

[7] See PacTel Request, supra, note 2; Arch Communications Group, "Request for Waiver," filed Jan. 27, 1994.

[8] Public Notice, "Private Radio Bureau Clarifies Procedures for Grandfathered 929-930 MHz Paging Operators to Qualify for Exclusivity," DA 94-35, released Jan. 10, 1994 ("Public Notice").

[9] MAP has applied for nationwide exclusivity on channels 929.5375 MHz and 929.9875 MHz and local exclusivity in the markets of (1) Los Angeles-Long Beach, California; (2) Washington, D.C./Maryland/Virginia; and (3) Baltimore, Maryland. See Letters from Garry Morrison, President, MAP, to Private Radio Bureau Licensing Division, FCC (Jan. 28, 1994).

For the same reasons raised by PacTel Paging and Arch Communications Group, and to ensure competitive parity with similarly situated licensees, MAP also seeks a temporary waiver of Section 90.495(a)(5) of the Commission's Rules to afford it twenty-four months to add 364 single-frequency transmitters required to retain exclusivity for its local and nationwide systems. During this twenty-four month period, MAP will add approximately 124 dedicated transmitters in 1994 and the balance in 1995. Nevertheless, MAP will construct its facilities in accordance with the authorization as clarified in the FCC's Public Notice.[10]

II. A TEMPORARY WAIVER IS CONSISTENT WITH FCC OBJECTIVES AND POLICIES

The court in Wait Radio made clear that waivers may be granted where "the underlying purpose of the rule will not be served, or will be frustrated, by its application in a particular case, and [ ] grant of the waiver is otherwise in the public interest[.]" [11] MAP submits that a waiver is justified in this case.

The Commission adopted Section 90.495(a)(5) to discourage warehousing and speculation by licensees.[12] Grant of MAP's waiver request does not give rise to such concerns. MAP is a legitimate operator, employing over 550 people, with over 260 base stations currently serving over 35 markets. Indeed, MAP has already expended in excess of $11 million on the provision of PCP service, and it is committed to providing

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[10] Public Notice, supra, note 8, at 1.

[11] See, e.g., WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

[12] Report and Order, at 8323-24.

the additional investment required to install the dedicated transmitters required by Section 90.495(a)(5) of the rules. Thus, the Commission may grant the relief requested without fear that MAP is a "speculator."

In fact, a waiver is more appropriate here than under the circumstances presented in other requests. Unlike PacTel Paging, which seeks a waiver partly because it provides service under an intercarrier agreement to use multi-frequency transmitters owned by other carriers, MAP owns or leases for exclusive use its own multi-frequency transmitters.[13] MAP has therefore shown a sufficient commitment to avoid any concern about speculation.

More importantly, the use of multi-frequency transmitters is justified where, as here, MAP must share a channel with another nationwide service provider. Immediately before MAP's acquisition of Metagram's system operating on 929.9875 MHz, MobileMedia (formerly Metromedia Paging Company) also applied to operate on that channel nationwide. The FCC granted Metromedia's applications despite Metagram's and MAP's objections.[14] Now that MAP must cooperate in the sharing of 929.9875 MHz, it cannot fully utilize dedicated transmitters on this channel anyway. Thus, it would be more cost effective to allow MAP to provide service temporarily on this channel over transmitters that also operate on MAP's non-shared channel,

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[13] MAP leases certain transmitters from Metagram under a lease/purchase arrangement. Title to the transmitters will pass to MAP this year. Other transmitters are owned by MAP.

[14] See Letter from Terry Fishel, Chief, Land Mobile Division, Private Radio Bureau, FCC, to Gene Belardi Metromedia, et al. (Sept. 22, 1993).

929.5375 MHz. MAP will gain in addition an opportunity to evaluate and refine a sharing arrangement with MobileMedia.

Further, grant of a waiver will allow MAP to convert its facilities from the use of frequency-agile to dedicated transmitters in step with the availability of transmitters and manpower. The major suppliers of 929 MHz base station transmitters have stated that it would be difficult, if not impossible, to secure in time the transmitters necessary to meet the requirement of Section 90.495(a)(5).[15] The new exclusivity rules, and the restrictions on the counting of multi-frequency transmitters, have placed demands on manufacturers to supply thousands of transmitters this year above the normal requirements of the industry. This will impose a significant backlog for licensees trying to obtain transmitters.

Even if MAP did receive the necessary equipment, its technical staff is already over-burdened with the task of adding transmitters.[16] The use of outside contractors may be limited, too, because of the requirements of other licensees for contractor services. In sum, any attempt to meet the Section 90.495(a)(5) deadline would be extremely difficult, if not impossible, because of a lack of transmitters and personnel.

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[15] As PacTel noted in its waiver request, manufacturers are naturally reluctant to admit that they cannot fulfill a large order. Nevertheless, Motorola has acknowledged in writing the difficulties the exclusivity rules have generated. See PacTel Request, at Exhibit C. Glenayre has been even more forthcoming, according to PacTel Paging, indicating to its major customers that the manufacturing queue would not enable the company to fill many large orders until late 1994. PacTel Request, at 9-10.

[16] Like other operators such as PacTel, MAP prefers to use its own personnel to construct transmitters to ensure compliance with the Commission's rules and MAP's authorizations. MAP's existing technical personnel would be extremely hard pressed to construct the required number of transmitters by the required date while meeting ongoing obligations with respect to existing systems.

Last, a waiver is consistent with the FCC's slow growth policies. The Commission adopted a three-year slow-growth extension for new licensees based upon the Commission's view that it may take that long to construct a system of more than 30 transmitters.[17] MAP's waiver request is more meritorious than a request for slow-growth status by a new applicant without any prior Commission history. MAP already has constructed almost half of the required number of transmitters, and it is committing to a shorter period than three years to complete construction fully. MAP also has invested an amount already in excess of the bond requirements for new applicants set forth in the Commission's Rules.

III. A TEMPORARY WAIVER WILL SERVE THE PUBLIC INTEREST

Grant of MAP's waiver will serve the public interest. First, as noted above, MAP's use of the multi-frequency transmitters will permit it to offer service to the public earlier than would otherwise be possible, especially in a shared environment.

Second, a grant would permit an orderly construction of the required transmitters without unduly straining resources needed for routine maintenance and repair of its extensive existing system providing service to the public.

Third, service to the public might be impaired absent a waiver. If MAP is unable to construct its system within the deadline and, as a consequence, loses it exclusivity, MAP could be forced to share its frequency with others. As the

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[17] Report and Order, at 8325-26.

commenting parties to the Notice properly pointed out, it would be extremely difficult to share frequencies with other licensees.[18] For instance, MAP's nationwide systems are centrally controlled via satellite. A co-channel licensee seeking to share the channel might be required to interconnect its facilities at MAP's uplink facilities; this would be extremely complicated and potentially disruptive. Service to the public under such circumstances would be jeopardized because capacity would be limited and because MAP might be precluded from expanding its geographic coverage.

Last, a grant will foster competition. The temporary relief sought here will enable MAP -- a legitimate service provider -- to obtain the channel exclusivity necessary for it to compete on an equal footing with other common and private paging carriers who are providing nationwide and multiple-state regional services throughout the areas MAP is seeking to serve.

[18] See generally Report and Order, at 8319-20.

IV. CONCLUSION

MAP has made every effort to apply its knowledge and expertise to provide innovative and competitive paging services. It requires the stability and predictability offered by exclusivity to continue to do so. It therefore respectfully requests grant of the waiver sought herein.

In accordance with 47 C.F.R. § 1.2002 of the Commission's Rules, 47 C.F.R. § 1.2002 (1992), MAP Mobile Communications, Inc., and MAP Paging, Co., Inc., hereby certify that they, their officers and directors, and any party with a 5 percent or greater interest in this request for waiver are not subject to a denial of the Federal benefits requested herein pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).

Respectfully submitted,

MAP MOBILE COMMUNICATIONS, INC.
and
MAP PAGING CO., INC.

By: _____
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4/8/94.

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April 8, 1994

Of Counsel: